

BEFORE  
THE PUBLIC SERVICE COMMISSION OF  
SOUTH CAROLINA  
DOCKET NO. 1999-469-C – ORDER NO. 2000-676

SEPTEMBER 26, 2000

IN RE: Proceeding to Review BellSouth Telecommunications,  
Inc.'s Guidelines for Alternate Form of Regulation.

) ORDER  
) RULING ON  
) GUIDELINES  
)

**I. INTRODUCTION**

This matter comes before the Public Service Commission of South Carolina (the Commission) by way of a proceeding to review a proposal by BellSouth Telecommunications, Inc. (BellSouth or the Company) for the establishment of "guidelines" pursuant to S.C. Code Ann. Section 58-9-576(B)(5)(Supp. 1999), a portion of a statute encompassing alternative regulation for electing Local Exchange Carriers (LEC's). The proposed guidelines set forth a process to be used for complaints regarding changes in rates or the setting of prices for new products and services.

Pursuant to the instructions of the Commission's Executive Director, a Notice of Filing was published one time in newspapers of general circulation, the purpose of which was to inform the public of ways to participate in the proceeding. The Company filed affidavits showing proof of publication.

Petitions to Intervene were filed by the Consumer Advocate for the State of South Carolina (the Consumer Advocate), AT&T Communications of the Southern States, Inc. (AT&T), MCI WorldCom (MCI), the Department of Defense/Federal Agencies (the

Department), the South Carolina Public Communications Association (SCPCA), TriVergent Communications (TriVergent), and the Southeastern Competitive Carriers Association (SCCA).

Accordingly, a hearing was held on March 14, 2000 at 2:30 PM in the Commission's hearing room, with the Honorable Philip T. Bradley, Chairman, presiding. BellSouth was represented by Caroline N. Watson, Esq., William F. Austin, Esq., and Douglas Lackey, Esq. BellSouth presented the direct and rebuttal testimony of Alphonso J. Varner. The Consumer Advocate was represented by Elliott F. Elam, Jr., Esq. The Consumer Advocate presented the testimony of Allen G. Buckalew. AT&T was represented by Francis P. Mood, Esq. AT&T presented no witnesses. MCI was represented by Darra W. Cothran, Esq., Janet Butcher, Esq., and Ken Woods, Esq. MCI presented the testimony of Greg Darnell. The Department of Defense/Federal Agencies was represented by Charles Schultz, Esq., and Terrance A. Spann, Esq. The Department presented no witnesses. SCPCA was represented by John F. Beach, Esq. SCPCA tendered the stipulated written testimony of Walter Rice, but it was rejected, since Rice was not present. TriVergent was represented by John J. Pringle, Esquire. TriVergent presented the testimony of John Lummus, who adopted the written testimony of Hamilton E. Russell, III. SCCA was represented by Frank R. Ellerbe, III, Esq. SCCA presented no witnesses. The Commission Staff (the Staff) was represented by F. David Butler, General Counsel. The Staff presented the testimony of Gary E. Walsh.

## **II. SUMMARY OF TESTIMONY**

BellSouth presented the direct and rebuttal testimony of Alphonso J. Varner. Varner presented BellSouth's proposed guidelines. The genesis of said guidelines is S.C. Code Ann. Section 58-9-576(B)(5), which states that "The LEC's shall set rates for all other services on a basis that does not unreasonably discriminate between similarly situated customers; provided, however, that all such rates are subject to a complaint process for abuse of market position in accordance with guidelines to be adopted by the commission." Varner then described the events that precipitated the filing of the proposed guidelines with the Commission.

On July 14, 1999, BellSouth notified the Commission of its intent to elect to have its rates, terms and conditions for its telecommunications services determined according to S.C. Code Section 58-9-576. BellSouth's election of price regulation became effective on August 13, 1999, pursuant to the terms of that Code section. On August 13, 1999, BellSouth notified the Commission that it would submit to the Commission pricing guidelines in compliance with Subsection 58-9-576(B)(5) within 90 days. In Order No. 1999-675, dated September 23, 1999, the Commission required BellSouth to file proposed guidelines by November 12, 1999. BellSouth then filed its proposed guidelines in compliance with the Commission Order.

Varner stated a belief that neither Subsection 58-9-576(B)(5) nor (6) requires BellSouth to refile its existing tariffs, but that these subsections only apply when BellSouth makes changes to existing services or introduces new services other than flat-

rated residence and single-line business service, which are addressed in another part of Section 58-9-576.

According to Varner, the statute establishes two categories of LEC services: flat-rated local exchange services for residential and single-line business customers and all other services. These two levels of services are afforded different levels of pricing flexibility by the terms of the statute. Subsection 58-9-576(B)(3) requires that prices for flat-rated residential and single-line business local exchange services (i.e. “basic services”) cannot be increased for a period of two years from the date of the election of price regulation as filed with the Commission. Such prices may, however, be decreased during the two-year period. Subsection 58-9-576(B)(5) subjects prices for all other services to a complaint process for abuse of market position pursuant to guidelines adopted by the Commission.

Further, Varner testified that Commission Order No. 1999-411 in Docket No. 95-862-C, dated June 21, 1999 impacts the terms of Subsection 58-9-576(B)(3) as they apply to BellSouth. Although Subsection 58-9-576 limits the services subject to the two-year rate cap to Basic Services, the Commission’s Order adopted an agreement between BellSouth and the Consumer Advocate that, for the term of the agreement, includes additional services to be capped and extends the length of the cap period. In fact, Varner listed some seven services to be capped at the price levels established or in effect on January 1, 2000 for a minimum period of sixty (60) months. Varner states that once the terms of the agreement are fulfilled, the terms of the statute govern the pricing of BellSouth’s services. At the end of the 60-month cap period, prices for Basic Services, as

specified in Subsection 58-9-576(B)(3), may be adjusted on an annual basis according to an inflation-based index, pursuant to Subsection (B)(4). Varner states that prices for services capped under the Agreement but not termed Basic Services under the statute will be treated as Other Services.

BellSouth's witness also stated a belief that the inflation-based index should be established prior to the expiration of the 60-month cap period, but that it was premature to establish the index in this proceeding at this time. Varner's point was that an index established 5 years before it was to be placed into effect would become outdated, due to the changing landscape of telecommunications.

Also, prices for other services would be set by BellSouth according to Subsection 58-9-576(B)(5) on a basis that does not unreasonably discriminate between similarly situated customers. Varner states that the statute does not limit the pricing of such services by BellSouth except that BellSouth's prices are subject to a complaint process for abuse of market position in accordance with the guidelines to be adopted by the Commission in this proceeding.

Varner then defines "similarly situated customers," "abuse of market position," and other terms. BellSouth also agrees in Varner's testimony to limit its price increases for Other Services such that increases shall not exceed five percent of aggregate revenues for Other Services in a twelve month period.

Finally, Varner testified that Article IV of BellSouth's proposed guidelines outlines specific procedures and time frames to be followed upon the filing of a complaint by a party. Among other things, the procedure requires the Commission to

make a “threshold determination” as to whether the facts alleged in the complaint, if true, would form the basis for a legitimate claim regarding abuse of market position or unreasonable discrimination between similarly situated customers.

Gary E. Walsh, Executive Director, testified for the Commission Staff. After recounting the history of what led up to the filing of the proposed guidelines, Walsh expressed his support for a delay in the establishment of the inflation-based index applicable to flat-rate local exchange residential and single-line business services, due to the 60-month price cap approved in Commission Order No. 1999-411. Walsh also supported BellSouth’s voluntary cap on services other than basic service, since such a cap is not required by the statute. In addition, the Executive Director proposed that the Commission include language which requires prices for all services other than basic service to be set at rates that equal or exceed BellSouth’s long run incremental cost of providing such services.

Walsh expressed the view that the complaint process proposed by BellSouth was duplicative in nature, based on the present statutes, rules, and regulations of the Commission, which allow the Commission to rule on all types of complaints. Walsh therefore recommended that the Commission reject the proposed process, and continue the Commission’s existing complaint procedures.

Finally, Walsh proposed that the Commission institute at some time in the future a generic docket to consider requiring all telecommunications carriers under the Commission’s jurisdiction to file annual financial data on an intrastate basis. Walsh

asserted that this data would assist the Commission in evaluating the effectiveness of the various forms of alternative regulation currently in effect.

Allen G. Buckalew testified for the Consumer Advocate. Buckalew recommended three changes that he believed were needed to provide adequate safeguards to consumers of telecommunications services. Buckalew suggests that the meaning of “aggregate revenues” be defined. He also takes issue with the part of the BellSouth complaint procedure that says a “complaining party must establish that discrimination has occurred” (emphasis added). Buckalew recommends changing the word “establish” to “state,” under the theory that “establishing” the discrimination is too burdensome for a complainant. Further, Buckalew advocates having BellSouth include a statement in its answer to a complaint that BellSouth’s price for a service is above incremental cost. Finally, Buckalew states a belief that the proposed Guidelines do not give customers time to react to price increases, and further proposes accordingly that for price increases, a tariff could be presumed valid 15 days after customers have been notified, and applied to existing customers after 90 days.

MCI presented the testimony of Greg Darnell, Regional Senior Manager of Public Policy for the Company. Darnell states a belief that the proposed complaint process guidelines narrowly defines certain terms, misinterprets other terms, and invents new terms in S.C. Code Ann. Section 58-9-576. As a whole, Darnell believes that the proposed guidelines would unnecessarily limit the future regulatory authority of the Commission. Darnell states that the BellSouth complaint process is unduly burdensome

on the complainant and virtually guarantees that BellSouth cannot lose. Darnell suggests alternate guidelines.

Finally, John H. Lummus, Manager of Governmental Affairs for TriVergent Communications adopted the testimony of Hamilton E. Russell, III, the Company's Vice-President and General Counsel. Lummus testified that BellSouth's Proposed Guidelines seek to limit the ability of TriVergent and other parties to bring evidence of anti-competitive behavior before the Commission. According to Lummus, BellSouth is attempting to do this by attempting to limit the complaint process to rate changes, and proposing an unwarranted "threshold determination" that must be made by the Commission. Further, Lummus states that the Commission must subject all of BellSouth's rates for "other services" to the complaint process mandated by Section 276(b)(5) of the Telecommunications Act of 1996, and that BellSouth is obligated to provide a complaint process that does not place an undue burden on a party challenging rates.

### **III. FINDINGS OF FACT AND CONCLUSIONS OF LAW**

1. BellSouth Telecommunications, Inc. has filed proposed guidelines, pursuant to S.C. Code Ann. Section 58-9-576(B)(5)(Supp. 1999), which states that "The LEC's shall set rates for all other services on a basis that does not unreasonably discriminate between similarly situated customers; provided, however, that all such rates are subject to a complaint process for abuse of market position in accordance with guidelines." The proposed guidelines, among other things, set forth a process to be used for complaints regarding changes in rates or the setting of prices for new products and



services when a LEC has elected to be regulated under Section 58-9-576. (Testimony of Varner and Walsh)

2. Neither subsection nos. 58-9-576(B)(5) nor (6) requires BellSouth to refile its existing tariffs. The subsections only apply when BellSouth makes changes to existing services or introduces new services other than flat-rated residence and single-line business service. (Testimony of Varner)

3. The two-year rate cap on basic services provided for in Subsection 58-9-576(B)(3) is impacted by the terms of Order No. 1999-411. That Order adopted an agreement, between BellSouth and the Consumer Advocate that, for the term of the agreement, includes additional services to be capped and extends the length of the cap period. There are some seven services which are capped at the price levels established or in effect on January 1, 2000, for a minimum period of sixty (60) months. We agree with BellSouth witness Varner that once the terms of the agreement are fulfilled, the terms of the statute govern the pricing of BellSouth's services. (Testimony of Varner)

4. We agree with and adopt Varner's statement that at the end of the 60-month cap period, prices for Basic Services, as specified in Subsection 58-9-576(B)(3) may be adjusted on an annual basis pursuant to an inflation-based index, pursuant to Subsection (B)(4). We also concur with the concept that prices for services capped under the agreement, but not termed Basic Services under the statute, will be treated as Other Services. (Testimony of Varner)

5. Both witnesses Varner and Walsh support a delay in establishment of the inflation-based index called for in the statute until some time prior to the expiration of the

60-month cap period. We agree with and adopt this concept. We also agree with the reasoning that an index established 5 years before it was to be placed into effect would become outdated, due to the changing landscape of telecommunications. (Testimony of Varner and Walsh)

6. Prices for Other Services (prices for the introduction of new products and services), according to Varner, would be set by BellSouth according to Subsection 58-9-576(B)(5) on a basis that does not unreasonably discriminate between similarly situated customers. These prices are subject to a complaint process, and must not reflect an abuse of market position. We agree with witnesses Walsh and Buckalew, however, that prices for all services other than basic service should be set at rates that equal or exceed BellSouth's long run incremental cost of providing such services. Any prices which deviate from long run incremental costs could indicate an abuse of market power. Furthermore, we accept BellSouth's proposal to limit price increases for Other Services such that increases shall not exceed five percent of aggregate revenues for Other Services during any given twelve-month period. Aggregate revenues are total annual revenues for services covered under S.C. Code Section 58-9-576, with the exception of flat-rated residential and single-line business services. (Testimony of Varner, Walsh, and Buckalew)

7. BellSouth's voluntary cap on services other than Basic Services is adopted. (Testimony of Varner and Walsh)

8. BellSouth's proposed complaint process is hereby rejected. We believe that it is duplicative of the already existing complaint procedure found in the

Commission's procedures as set out by law. (Testimony of Walsh) We hold that the existing Commission complaint procedure is adequate and appropriate for the consideration of complaints under Subsection 58-9-576(B)(5). See 26 S.C. Code Regs. 103-835 (1976) and the related following sections. We take particular issue with the "threshold" requirement contained in BellSouth's proposed complaint procedure. This, as a practical matter, requires the Commission to pre-judge the merits of the case prior to even receiving testimony from BellSouth. We note that all intervenor witnesses and the Staff uniformly call for rejection of BellSouth's proposed complaint procedure. We believe that our present complaint procedure allows a balanced view and is fair to all parties. We decline at this time to adopt BellSouth's definitions of "similarly situated customers," "abuse of market position," "reasonable discrimination," and "unreasonable discrimination." We prefer to establish these standards through the cases that come before us.

9. BellSouth shall comply with the requirements of Section 58-9-576 (B) (6), which states that it shall file tariffs for its local exchange services that set out the terms and conditions of the services and the rates for such services. Tariffs filed are presumed valid and the time frames set forth pursuant to such Section shall not be affected by allegations of violations of the price-setting guidelines or complaints filed through the Commission's existing complaint process. A tariff shall be presumed valid and become effective seven days after filing for price decreases and fourteen days after filing for prices increases.

10. We adopt Articles I, II, and III of BellSouth's proposed guidelines as modified above; however, we reject the proposed Article IV complaint procedure as duplicative, and declare that the Commission's complaint procedure is appropriate in any such complaint situations as may arise under Section 58-9-576(B)(5).

11. This Order shall remain in full force and effect until further Order of the Commission.

BY ORDER OF THE COMMISSION:

Chairman

ATTEST:

Executive Director

(SEAL)